

## REMARKS

Claims 65-101 are pending in the application. Claims 65, 74, 83, 93, 94, 96, and 97 have been amended. No new matter is presented. Reconsideration is requested.

### Claim Rejections Under 35 U.S.C. § 112

Claims 68, 77, 90 and 96 have been rejected under 35 U.S.C. § 112, second paragraph, for being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner is unsure how the cardiac harness is delivered minimally invasively and what Applicant defines as minimally. There are numerous references throughout the specification and in the drawings providing adequate support and definition for minimally invasive delivery of a cardiac harness. In one such example, at page 22, line 9-21, and with reference to FIGS. 13 and 14, the cardiac harness can be folded along its length, along the length of the electrodes, in order to reduce the profile for intercostal delivery, for example through the rib cage or other area typically used for minimally invasive surgery for accessing the heart. A person having ordinary skill in the art would understand that minimally invasive delivery is no larger than an opening created between two ribs, adjacent the apex of the heart, as described at page 22 of the specification and as shown and supported in the drawings in FIGS. 13, 14, and 27-35. Further support is found at page 43, line 26 through page 48, line 7. In this embodiment, and as depicted in FIGS. 27-35, the cardiac harness is folded or compressed into a housing and delivered into the thoracic cavity 141 between the patient's ribs to gain direct access to the heart 10 (see FIG. 30). Further, evidence of minimally invasive delivery includes a "small incision" to be made in the pericardium to allow the delivery system 140 access to the heart (page 44, lines 2-5).

It is respectfully urged that the foregoing written description and drawings clearly define minimally invasive delivery of the cardiac harness of the present invention and that the rejection under 35 U.S.C. § 112 be withdrawn.

### Claim Rejection Under 35 U.S.C. § 102

Claims 65-101 are rejected under 35 U.S.C. § 102(b) as being anticipated by Alfernness et al. (U.S. Patent No. 6,169,922). Applicant respectfully traverses. As a preliminary matter, Alfernness et al. describes a cardiac jacket which is a constraint device with electrodes interwoven into the jacket. In other words, Alfernness et al. discloses two distinct structural members, the cardiac jacket made of a polymer material and a metal wire electrode interwoven into the polymer jacket. Alfernness et al. does not teach that the wire electrode is or functions as a cardiac jacket constraint device. In contrast, the cardiac harness of the present invention is formed of a metal alloy which is a conductive material such that the cardiac harness has undulating strands, at least some of which are the electrodes. Thus, Alfernness discloses two structural members while the presently claimed cardiac harness comprises a single structural member in the form of metallic undulating strands, some of which are in fact the electrodes. For this reason alone, the claims are patentably distinguishable over Alfernness.

Further, the claims have been amended to recite "the cardiac harness formed of undulating strands of hinge elements." Alfernness et al. does not teach undulating strands of hinge elements, thus the independent claims are patentably distinguishable over Alfernness et al. The undulating wires disclosed in Alfernness et al. are the electrodes, not the cardiac harness formed of undulating strands of hinge elements. Accordingly, claims 65-101 are patentably distinguishable over Alfernness et al., and it is respectfully requested that the rejection under 35 U.S.C. § 102(b) be withdrawn.

### Double Patenting Rejection

Claims 65-101 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over four co-pending and co-owned U.S. patent applications. A Terminal Disclaimer is being filed concurrently herewith to obviate the double patenting rejection.

Conclusion

Claims 65-101 remain pending in the application. Reconsideration is requested. If the Examiner feels that a telephone conference would facilitate prosecution of the application, the undersigned can be reached at (310) 824-5555.

Respectfully submitted,

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